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**Adoption of decisions: decisions to be taken by
the Meeting of the Parties to the Convention**

General guidance on enhancing consistency between the Convention and environmental impact assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia

Summary

The present guidance responds to the requirement of the workplan adopted at the fifth session of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the first session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment, which provides for the development of general guidance on resolving a possible systemic inconsistency between the Convention and environmental assessment within the framework of a State ecological expertise system (ECE/MP.EIA/SEA/2, decision V/9–1/9, annex).

The guidance was prepared by two international consultants to the secretariat in consultation with Parties and other stakeholders, and taking into account comments by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its second and third meetings (Geneva, 27–30 May and 11–15 November 2013, respectively).

The Meeting of the Parties to the Convention is invited to endorse the guidance through decision VI/8.

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Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Mandate and objectives.....	1-5	3
II. Introduction.....	6-39	4
A. The OVOS/expertise system	6-19	4
B. Specific issues of concern.....	20-39	6
III. Recommendations.....	40-78	10
A. General recommendations	40-51	10
B. Specific recommendations.....	52-78	12
IV. Elements that should be considered when negotiating a bilateral agreement involving a country with an OVOS/expertise system	79-100	17
A. Introduction	79-86	17
B. Specific elements to be considered.....	87-100	18
Annexes		
I. Delegating tasks in the public participation procedure		21
II. Delegating tasks in the transboundary procedure.....		23

I. Mandate and objectives

1. The present guidance has been prepared further to the deliberations of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment. As a result of the Committee's deliberations on information received regarding the Convention's implementation in some countries in Eastern Europe, the Caucasus and Central Asia, it observed that there might be a more general systemic inconsistency between the Convention and environmental assessment within the framework of State ecological *expertiza* (or expertise) systems (ECE/MP.EIA/IC/2011/2, para. 18). In that connection, in its report to the fifth session of the Meeting of the Parties to the Convention (MOP) (Geneva, 20–23 June 2011) the Implementation Committee proposed “to include in the new workplan the development of general guidance on resolving a possible systemic inconsistency between the Convention and environmental assessment within the framework of State ecological expertise systems” (ECE/MP.EIA/2011/4, para. 73).

2. At its fifth session, the MOP considered relevant opinions and observations of the Implementation Committee (ECE/MP.EIA/15, decision V/4, para. 6), and included the development of the proposed general guidance in the workplan for the period up to the sixth session of the Meeting of the Parties to the Convention and the second session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (ECE/MP.EIA/SEA/2, decision V/9–I/9, annex).

3. Noting that “compliance concerns both legal implementation and practical application” (ECE/MP.EIA/10, decision IV/2, annex II, para. 24), the purpose of this guidance document is to further support Parties to the Convention in Eastern Europe, the Caucasus and Central Asia in further developing their legislation in compliance with the Convention and to streamline application of the Convention throughout the region.

4. The document is largely based on the opinions and recommendations of the Implementation Committee as expressed in the reports of its sessions, including its findings and recommendations subsequent to either a submission or a Committee initiative, and in its reports to the MOP. To some extent, with respect to the issues related to public participation, it also draws on the respective opinions and recommendations of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

5. The first draft of the document was also based on information obtained from Governments and other stakeholders from several countries in Eastern Europe, the Caucasus and Central Asia¹ through a questionnaire, and during an informal consultation meeting held in Geneva, on 30 October 2012 on the margins of a joint workshop on public participation in strategic decision making.² The draft was then sent for comments to all the countries in advance of the second meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 27–30 May 2013) where it was presented and discussed. Countries were also invited to provide further

¹ Including from Armenia, Azerbaijan, Kyrgyzstan, the Republic of Moldova, the Russian Federation and Uzbekistan.

² The informal consultations included representatives of the Governments of Armenia, Azerbaijan, Belarus, Kyrgyzstan, Mongolia, the Republic of Moldova, the Russian Federation and Uzbekistan, and non-governmental organization representatives from Armenia, Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation.

comments in writing following the meeting. As requested by the Working Group, the draft guidance was finalized taking into account the comments provided before, during and after the meeting.³

II. Introduction

A. The OVOS/expertise system

6. A general outline of the OVOS/expertise system in the countries of Eastern Europe, the Caucasus and Central Asia is first necessary in order to illustrate those features that may raise concerns in the context of the application of the Convention. The description that follows is not exhaustive, and does not reflect all variations existing in national legislation.

7. The regulatory framework for development control systems in most of the countries in Eastern Europe, the Caucasus and Central Asia is based on the system of "expertise" whereby the decision-making process involves the review of planned activities (mostly concrete development projects but also plans, programmes, etc.) by special expert committees/individual experts. The expert committees/experts are affiliated to various governmental bodies. The environmental part of the review is usually called the State ecological expertise (also sometimes referred to as the State environmental review) and is usually subject to separate laws.

8. Planned activities which have a potential impact on the environment are subject to State ecological expertise conducted by the competent environmental authorities or by external experts nominated by the competent environmental authorities. The procedure is finalized with the so-called "expertise conclusion". The activity can be implemented only if the conclusion is positive.

9. Additionally, the activities that are considered to have a potentially significant impact on the environment are subject to OVOS, an acronym whose terms, in direct translation, can be rendered as "assessment of the impact upon the environment". There is usually a list of activities which always require State ecological expertise and/or OVOS. However, the environmental authorities may, upon review of the proposed activity, decide that an OVOS must be conducted, irrespective of whether the activity is included in the list or not.

10. The OVOS is the procedure during which the proponent/developer (i.e., the applicant for the authorization) collects all the necessary information concerning the impact of the project on the environment and compiles the relevant impact assessment documentation. The OVOS procedure is not of a permitting nature and is closely connected to the developing of the overall project documentation: the proponent/developer or the

³ These included comments from Belarus, Georgia, the Republic of Moldova, the Russian Federation and Ukraine. Belarus indicated that the systemic issues described in the general guidance did not reflect its own national environmental impact assessment legislation and that the guidance was not of relevance to it. Based on the comments made and with a view to reflecting in a more accurate manner the purpose of the guidance, which is to support countries in further developing their legislation in compliance with the Espoo Convention, and not to single out inconsistencies, it was proposed to change the title of the guidance from "General guidance on resolving a possible systemic inconsistency between the Convention and environmental assessment within State ecological expertise" to "Guidance on enhancing consistency between the Convention and environmental assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia".

consultant hired by the proponent/developer conducts the necessary investigation and studies and prepares draft OVOS materials. Such materials may take the form of a standalone document (which is usually called the OVOS report) or may be just one of the chapters of the overall project documentation.

11. Additionally, in some countries, the proponent/developer is also responsible for preparing a document called the OVOS statement (or statement on environmental impact) which in an abbreviated manner gives basic information about the project and its potential environmental impact. It serves as a basis for public consultation, and therefore in some countries the OVOS statement should be published in its entirety. It is the proponent/developer who is responsible for notifying the public, providing the respective information to the public and conducting the public consultations, including public hearings. Public hearings are the main procedure in the subregion for allowing the public to submit any comments, information, analyses or opinions that it deems relevant, although in some countries hearings are formally done in cooperation with the competent authorities. Once the consultations are completed the proponent/developer is responsible for completing the OVOS document meant to summarize the results of OVOS procedure.

12. The OVOS materials (the OVOS report or separate chapter in the overall project documentation), along with the other required documentation, is submitted by the proponent/developer to the relevant authorities for State ecological expertise. At the expertise phase, the authorities (or the external experts nominated by them) examine the compliance of the documentation submitted, including the information on public participation, with the requirements set by law. The State ecological expertise procedure is finalized with the expertise conclusion. As mentioned above, the project in question can be implemented only if the authorities issue a positive conclusion.

13. The regulatory framework of the countries concerned usually gives more prominence to the State ecological expertise procedure, which is usually defined in laws adopted by the parliament (such as a specific law on State ecological expertise or a general environmental protection law), than to the OVOS procedure, which is regulated by a low-level measure/instrument, such as a Government instruction, guidelines or recommendations or a so-called "State Construction Standard", which often cannot be enforced in courts.

14. State ecological expertise and OVOS are two closely interlinked procedures, with OVOS preceding the expertise. In most countries they are required at the stage of the development of the feasibility study for the project and at the stage of developing a construction design of the project.

15. Bearing the above in mind, the OVOS procedure, despite its name, should be distinguished from what is generally internationally understood as an environmental impact assessment (EIA) procedure. The two terms are not exactly synonymous because they reflect slightly different practices. Both have similar objectives, but they have some different features that are important from the point of view of the Espoo Convention.

16. Therefore, for the purposes of the Espoo Convention (and also for the Aarhus Convention) the OVOS and State ecological expertise are considered as a decision-making process constituting jointly a form of an EIA procedure finalized with the conclusions of the State ecological expertise. The decision-making procedure in the regulatory framework for development control based on the OVOS/expertise system starts in some countries with the proponent/developer submitting to the competent authorities the "declaration of intent" (in some countries this early stage does not exist). Thereafter, it involves the development of the OVOS documentation, including the carrying out of the public participation process, followed by the submission of the entire documentation to expertise. The procedure ends with the issuance of the expertise conclusions by the competent environmental authorities.

After the expertise conclusions there is normally also a construction permit granted by the competent construction authorities and sometimes additionally also another decision of a permitting nature, and for some activities even a decision of the highest national authorities.

17. The details of the regulatory framework for development control based on the OVOS/expertise system may differ in each of the countries concerned, and not all the general features described above or the specific features described below may apply to all countries in Eastern Europe, the Caucasus and Central Asia. Some of these countries have recently significantly changed their frameworks, in particular those that have been prompted to do so as a result of opinions issued by the Espoo Convention Implementation Committee or the Aarhus Convention Compliance Committee. The experience gained in this respect shows that there are some features of the traditional OVOS/expertise system which can give rise to issues of concern in implementing the obligations stemming from the Espoo Convention, and which could be successfully addressed.

18. There are a number of differences, both conceptual⁴ and methodological,⁵ between the traditional OVOS/expertise system described above, still in existence in many countries in Eastern Europe, the Caucasus and Central Asia, and the EIA procedure as internationally known. The very existence of such differences is perfectly legitimate and stems from the sovereign right of each Party to the Espoo Convention to develop its own national framework for development control. However, such national frameworks must be consistent with the Convention and allow the Party to fulfil its obligations under the Convention.

19. Bearing this in mind, and following the experience of the countries that have recently changed their national frameworks to meet their obligations under the Espoo Convention, it is worthwhile to assist the other countries in Eastern Europe, the Caucasus and Central Asia that would also like to do so by describing some specific features of the traditional OVOS/expertise system that can give rise to issues of concern in fulfilling the obligations stemming from the Espoo Convention, as set out below, and on that basis to provide some guidance on how to resolve the possible problems that arise therefrom.

B. Specific issues of concern

1. Scope of activities covered

20. The scope of activities covered by the traditional OVOS/expertise system is usually delimited by a general list of activities subjected to state environmental expertise supplemented by a narrower list of activities that are recognized as environmentally hazardous and therefore require OVOS. The former list is usually very extensive, while the latter list is much narrower and usually broadly comparable with the list of activities in appendix I to the Convention. However, since traditionally activities that do not involve construction are not subjected to expertise, the list of activities subjected to OVOS also usually includes only activities where construction is involved and does not include several activities such as, for example, deforestation of large areas or intensive rearing of poultry or pigs.

⁴ See for example Stephen Stec, "EIA and EE in CEE and CIS: Convergence or Evolution?", in *A World Survey of Environmental Law*, Stefano Nespore, ed. (Milan, Giuffrè Editore, 1996).

⁵ Aleg Cherp and Alexios Antypas, "Dealing with Continuous Reform: Towards Adaptive EA Policy Systems in Countries in Transition", *Journal of Environmental Assessment Policy and Management*, vol. 5, No. 4 (December 2003), pp. 455–476.

21. In many countries the environmental authorities may require OVOS for activities outside the list of activities subjected to OVOS if they potentially have environmental impact. However, usually there are no criteria and thresholds for the selection of such activities. This often causes problems and misunderstandings between the environmental authority and the project proponent/developer. Some countries do not have a formal list of activities subjected to OVOS at all, but just general legal requirements to prepare OVOS (conduct expertise) on activities that potentially may have an environmental impact. This gives wide discretion to project proponents/developers and environmental authorities in identifying activities subject to OVOS/expertise. In some cases it also results in overloading the authorities with small and low impact projects.

2. Scope of assessment and content of EIA documentation

22. Most of the traditional OVOS/expertise systems do not envisage a scoping process as a specific procedural step. Instead, there are quite detailed requirements as to the content of the OVOS documentation included in administrative measures regulating the procedure; however, these are not enforceable. These requirements are often differentiated according to the stages of the project's review and development (e.g., at the feasibility study stage of a project the requirements are usually slightly different than at the construction design stage), but most often are not differentiated with regard to the particular features of the project in question, in particular the size and location of the project.

23. Furthermore, there is not always a clear requirement to provide all the elements of the EIA documentation as required in the appendix II to the Espoo Convention. For example, quite often there is no clear requirement for "identification of gaps in knowledge and uncertainties" and no clear requirement regarding reasonable alternatives to be described.

3. Public participation

24. In the traditional OVOS/expertise system, public participation as a mandatory element of the procedure is envisaged basically only at the OVOS stage (if there is any formal procedure for OVOS at all — because in some countries the procedure for OVOS is not regulated formally). At the expertise stage usually the main possibility for public participation is provided through a so-called public ecological expertise. The latter is not a mandatory element of the expertise procedure, and in practice is only rarely conducted. Therefore the Aarhus Convention Compliance Committee found that it cannot not be considered as a primary tool to ensure compliance with the provisions of article 6 of the Aarhus Convention, but may play a role as an additional measure to complement the public participation procedure required as a mandatory part of the decision-making (ECE/MP.PP/2011/11/Add.2, para. 76).

25. As already indicated, public participation is a mandatory part only at the OVOS stage, and in the traditional OVOS/expertise system it is usually the proponent/developer that is responsible for organizing public participation, including notifying the public (in some countries also for notifying the public authorities), making available the relevant information, conducting public hearings and collecting the comments.

26. Such a reliance on the proponent/developer in providing for public participation during the OVOS stage is in line with the role of OVOS in the traditional OVOS/expertise system, but is not in line with the Espoo Convention, in which it is implicit in the provisions of article 3, paragraph 8, and article 4, paragraph 2, that comments should be submitted to the competent public authority. This has been confirmed by the

Implementation Committee which stated that “the organization of public participation under the Convention was the responsibility of the competent authority⁶ and not of the proponent. Nevertheless, it might be possible under national systems that the competent authority and the proponent would organize the public participation together. However, the proponent should not be responsible for public participation without the competent authority” (ECE/MP.EIA/IC/2010/4, para. 19 (b)).

27. A similar opinion was given by the Aarhus Convention Compliance Committee, which stated that “it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from public authority⁷, and that comments should be submitted to the relevant public authority (article 6, paragraph 2 (d) (iv) and (v), and article 6, paragraph 6)” and therefore found that “reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention” (ECE/MP.PP/2008/5/Add.6, para. 78; see also ECE/MP.PP/2011/11/Add.2, para. 77).

28. Another feature of the traditional OVOS/expertise system is that usually the public participation procedure is not clearly and precisely regulated by law. Although in some countries the procedure for public participation is regulated in detail, in most countries there are only general declarations on public participation included in the legal framework. Also, quite often there are no clear provisions regarding the timing and the content of the public notice of the proposed activity, the availability of information for public inspection and the forms public participation might take, as well as no clear obligation to take comments by the public into account in the decision-making.

29. In legal frameworks that attempt to regulate some elements of public participation quite often there is a requirement that comments from the public be “reasoned”. The public is usually clearly granted only access to a limited part of the documentation (the OVOS statement), while access to the entire relevant documentation is often heavily restricted. Different reasons are given for these restrictions, including, quite often, ownership of information and copyright protection, and sometimes the volume of information to be made available.

4. Final decision

30. As already indicated, after the expertise conclusions there is normally also a construction permit granted by competent construction authorities and sometimes additionally also another decision of a permitting nature. In most countries, however, there is no clear indication which of these decisions finally permits the activity to take place. Sometimes also the legal nature of such a decision is not specified.

31. Furthermore, usually there is no clear requirement that in the permitting decision due account is taken of the outcome of OVOS. In fact, such a permitting decision normally does not set environmental conditions for the activity. Such conditions are deemed to be approved by the preceding expertise conclusions, which themselves also do not include clear conditions but usually are limited to merely approving the documentation, including the OVOS materials, submitted by the proponent/developer. However, when the expertise

⁶ According to article 1 of the Espoo Convention “competent authority” means the national authority or authorities designated by a Party as responsible for performing the tasks covered by the Convention and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity.

⁷ In the official Russian translation of the Aarhus Convention the term “public authority” is translated as “State authority”. This term, however, should be interpreted in a broad way including self-governing bodies such as local or municipal authorities in cities, towns or villages (see *The Aarhus Convention: An Implementation Guide*, 2nd edition, 2013, page 35).

conclusions are deemed to be the final decision for the purposes of the Espoo Convention, there is no clear legal mechanism to ensure that the environmental conditions for the activity approved in such a way cannot be altered factually by a change of technical details as approved by subsequent permitting decisions.

32. The expertise conclusions and permitting decisions are not always required to provide the reasons and considerations on which they are based, and even if this is the case they are not always publicly accessible. Finally, in many countries there is no clear requirement that they are publicly announced. Furthermore, usually there are no clear requirements that authorities issuing expertise conclusions and authorities issuing subsequent permitting decisions keep the records of the respective proceedings, including copies of actual expertise conclusions, decisions and documentation. Usually the proponents/developers are required to keep them.

5. Transboundary procedure

33. Very few countries within a traditional OVOS/expertise system envisage clear provisions regarding transboundary procedures. Usually such procedures are assumed to be regulated by the Convention itself, which — bearing in mind its general nature — means that in practice there is a total lack of clarity in this respect and issues are handled on an ad hoc basis. Therefore the fact that a country's Constitution provides for the direct application of international agreements is considered by the Implementation Committee "as being insufficient for proper implementation of the Convention without more detailed provisions in the legislation" (ECE/MP.EIA/10, decision IV/2, annex I, para. 64; cf. decision IV/2, annex II, para. 28).

34. The very nature of the traditional OVOS/expertise system whereby public authorities get involved in the process usually quite late, i.e., as a rule only after the OVOS documentation is prepared and after the public has been consulted, provides a significant obstacle to the implementation of the Convention's provisions.

35. The first problem is timely notification: the late involvement of the authorities, combined with a lack of any effective screening mechanism for a project likely to have transboundary effects, makes it impossible in practice to fulfil the obligation under article 3, paragraph 1, of the Convention to notify potentially affected Parties "no later than when informing its own public about the proposed activity". The project proponent/developer is usually not under an obligation, before informing the public, either to notify the potentially affected Party itself or to inform public authorities about the likelihood of a significant adverse transboundary impact. Notification of the potentially affected Party by the developer would not be a solution to the problem because, as indicated by the Implementation Committee, "entrusting the proponent of an activity with the carrying out of the procedure for transboundary environmental impact assessment would not be adequate, unless the proponent was the State" (ECE/MP.EIA/IC/2010/2, para. 36). Similarly, informing the public authorities about the likelihood of a significant adverse transboundary impact would not be a solution unless there was an effective screening mechanism in place to ensure that proponents/developers followed that obligation.

36. Another issue of concern relating also to the timing of notification described above is that in the traditional OVOS/expertise system the transboundary procedure may be initiated only when the process of developing the documentation, including the OVOS materials, together with the related public participation procedure have both in principle already been completed at the domestic level, and the final documentation, including the outcomes of public participation, has been submitted by the proponent/developer to the competent authority. However, as a result of the transboundary procedure under articles 3 and 4, as well as the consultations provided for under article 5, the entire project

documentation may well be revised, in which case it would mean ensuring the possibility for the public in the country of origin to participate again.

37. The conduct of the transboundary procedure is often hindered by the already mentioned approach to transparency whereby access is clearly granted only to limited part of the documentation (i.e., the OVOS statement), while access to the entire relevant documentation is restricted. Also the fact that providing possibilities for the participation of the domestic public is as a rule the responsibility of the project proponent/developer and not of the public authorities does not contribute to the smooth running of the transboundary public participation procedure. As indicated by the Implementation Committee, while generally "the organization of public participation under the Convention [is] the responsibility of the competent authority and not of the proponent" in the case of transboundary public participation "the concerned Parties [have] a common responsibility for providing equivalent opportunities for public participation in the affected Party, including accurate and effective notification of the public". (ECE/MP.EIA/IC/2010/4, paras. 19 (b) and (c)). This means that public authorities that are not necessarily familiar with the practice of public participation would need to undertake this task.

38. Finally, the design of the decision-making scheme in which it is difficult to identify the final decision authorizing the activity, as well as any conditions attached to it, creates a problem in fulfilling the obligations stemming from article 6 of the Convention.

39. Even more fundamental problems arise for the "affected Party" to fulfil its obligations. The traditional OVOS/expertise system is not designed with a view to accommodating situations of a transboundary nature. The major problem here is not only a lack of clear procedures and practical experience, but also the lack of even generally described competences and powers, as well as a sufficient legal basis to use resources to provide public participation together with the Party of origin.

III. Recommendations

A. General recommendations

1. Need for a national framework

40. As stipulated in article 2, paragraph 2, of the Convention "each Party shall take the necessary legal, administrative or other measures to implement the provisions of [the] Convention". In real terms this may mean establishing a framework for an EIA procedure that:

- (a) Involves public participation;
- (b) Requires preparation of the EIA documentation described in appendix II to the Convention;
- (c) Covers all the proposed activities listed in appendix I to the Convention.

41. The mere provision in the Constitution to directly apply international agreements is insufficient for proper implementation of the Convention without more detailed provisions in the legislation (ECE/MP.EIA/10, annex I, para. 64, cf. decision IV/2, annex II, para. 28).

42. While establishment of an EIA procedure is one of the core obligations under the Convention (MP.EIA/WG.1/2003/3, para. 9) a proper domestic framework for authorizing and assessing proposed activities likely to have a significant environmental impact is necessary for implementation of the Convention, especially with respect to public participation (ECE/MP.EIA/IC/2010/4, para. 19 (a)).

43. The national framework should clearly indicate not only the details of domestic procedure but also the details of transboundary procedure, in particular:

- (a) Where in the decision-making process there is a place for a transboundary EIA procedure;
- (b) Who is responsible for carrying it out;
- (c) By which means it should be carried out;

(see ECE/MP.EIA/10, decision IV/2, annex I, para. 64).

44. When establishing their national regulatory framework with respect to public participation, Parties to the Convention that are also parties to the Aarhus Convention should fully observe also the respective obligations under the Aarhus Convention.

2. Modalities for the legal framework and legal technique

45. In order to follow the present recommendations and assure full compliance with the Convention, Parties in Eastern Europe, the Caucasus and Central Asia may wish:

- (a) To introduce necessary changes to their existing OVOS/expertise system; or
- (b) To establish a new legal framework, which may include:
 - (i) Either an EIA law based on the model applied in the rest of the United Nations Economic Commission for Europe region; or
 - (ii) Their own specific model.

46. While the details of the EIA procedure, for example regarding public participation, should rather be included in the legislation than left for implementing regulations (ECE/MP.EIA/10, decision IV/2, annex II, para. 32), the technical aspects, for example the list of activities or specific requirements as to the EIA documentation, may be included in the implementing regulations.

47. When a Party chooses to establish a new legal framework it may consider doing this by way of a separate standalone EIA law or alternatively by introducing respective legal provisions into the general act on environmental protection.

3. Principles

48. The main principles of the national framework should be as follows:

- (a) The national framework ensures:
 - (i) Full compliance with the Convention;
 - (ii) The ability to implement the Convention in practice;
- (b) The national framework is compatible and integrated with the overall development control legislation;
- (c) For Parties to the Aarhus Convention, the national framework ensures compliance with the respective requirements regarding public participation under the Aarhus Convention;
- (d) The national framework provides for:
 - (i) The proper role of public authorities and their involvement in the procedure at the early stage;
 - (ii) Early identification of the activities with potential transboundary impact;
 - (iii) Effective public participation.

49. Ensuring the proper role of public authorities includes that public authorities have:
- (a) The ultimate responsibility for conducting:
 - (i) Public participation (see also annex I below);
 - (ii) The transboundary procedure (including notification) (see also annex II below);
 - (b) An obligation to maintain:
 - (i) Environmental information relevant to their competences and functions, including those competences upon which they base their decisions (ECE/MP.PP/C.1/2009/2, annex II, para. 10 (a));
 - (ii) All the relevant documents, including the application for development consent, EIA documentation and the final decision in publicly accessible databases or registers (possibly electronically accessible).
50. The national framework should be designed in such a way as to prevent the use of shortcuts in the decision-making procedure, i.e., parts of EIA being provided for evaluation and approval by the decision-making authority prior to any information being made publicly available (*ibid.*, para. 10 (f)).
51. Whatever the model chosen by a Party, it should be based on the above principles and follow also the specific recommendations set out below which provide a list of requirements a national framework should have in order to fully implement the Convention.

B. Specific recommendations

1. Activities

52. For Parties to both the Espoo and the Aarhus Conventions, the national framework for EIA as a tool to implement both Conventions should cover all the proposed activities listed in appendix I to the Espoo Convention and annex I to the Aarhus Convention, including, for example, "nuclear power stations", but also "intensive rearing of pigs", "opencast mining", "deforestation", "offshore hydrocarbon production" and "groundwater abstraction". It is suggested that Parties to the Espoo Convention not Parties to the Aarhus Convention also follow the present recommendations.

53. When designing the national framework it should be borne in mind that:

(a) Article 1, paragraph (v), of the Convention defines a "proposed activity" as "any activity or any major change to an activity", thus, for example, including the modernization of motorways and express roads (ECE/MP.EIA/IC/2009/2, para. 30 (b));

(b) The list of activities under both Conventions include not only activities involving construction: for example, for the purposes of the Convention "maintenance of a depth in a waterway constitutes continuation of such activity ... and remains subject to the obligations under the Convention" (ECE/MP.EIA/IC/2010/2, annex, para. 40).

2. Scope of assessment and content of EIA documentation

54. When designing the national framework it should be borne in mind that, while the Convention lists in appendix II some mandatory elements of the content of the EIA documentation, a case-by-case determination of the scope of information to be included in these elements of the EIA documentation ("scoping") is an effective method for streamlining the assessment and reducing its costs. Furthermore, the Implementation

Committee has recommended involving the affected Party in such a case-by-case determination (ECE/MP.EIA/IC/2009/4, para. 26).

55. Parties may provide for a case-by-case determination of the scope of information to be included in the EIA documentation as a mandatory part of the procedure, or may make it obligatory only when conducting a transboundary procedure. As a minimum it is recommended that, if the proponent/developer so requests before submitting an application for development consent, the competent authority should give an opinion on the scope of information to be included in the EIA documentation.

56. When establishing the requirements for the mandatory elements of the content of the EIA documentation it should be borne in mind that:

(a) The Convention's provision requiring that the EIA documentation include a description, where appropriate, of reasonable alternatives (appendix II, item (b)) is mandatory for the legal implementation of the Convention by a Party (ECE/MP.EIA/IC/2009/2, para. 39);

(b) It is important that the no-action alternative be addressed fully so that the evolution of the environment in the absence of the project can be considered (ECE/MP.EIA/IC/2010/2, para. 33);

(c) The non-technical summary is a mandatory element of the EIA documentation and it should outline in non-technical language the findings included in each of the earlier chapters corresponding to items (a)–(h) of appendix II (cf. ECE/MP.EIA/IC/2009/2, para. 16), including visual presentations, as appropriate (maps, graphs, etc.);

(d) Identification of gaps in knowledge and uncertainties encountered in compiling the required information is also a mandatory element of the EIA documentation.

3. Public participation

57. When designing the national framework it should be borne in mind that organization of public participation under the Convention is the responsibility of the competent authority and not of the proponent/developer. Nevertheless, it might be possible under national systems that the competent authority and the proponent would organize the public participation together. However, the proponent should not be responsible for public participation without the competent authority (ECE/MP.EIA/IC/2010/4, para. 19 (b)). Thus, these observations regarding the role of the developers/project proponents shall not be read as excluding their involvement, under the control of the public authorities, in the organization of the public participation procedure (for example conducting public hearings) or imposing on them special fees to cover the costs related to public participation (ECE/MP.PP/2011/11/Add.2, para. 81) (see also annex I).

58. To ensure the proper conduct of the public participation procedure, the administrative functions related to its organization may be delegated to bodies or persons which specialize in public participation or mediation, are impartial and do not represent any interests related to the proposed activity being subject to the decision-making (ECE/MP.PP/2011/11/Add.2, para. 79).

59. The public should be informed promptly and properly not only about the initiation of the procedure and possibilities to participate, but also of the issuing of the final decision (permit) (see also art. 6, paras. 2 and 9, of the Aarhus Convention).

60. The national framework should contain detailed requirements for informing the public, as required under article 6, paragraph 2, of the Aarhus Convention, about the initiation of the procedure and possibilities for the public to participate. In particular:

(a) There should be a clear requirement that the public is informed in an adequate, timely and effective manner;

(b) Mandatory forms of the public notice should be specified, including a notice in the vicinity of the venue of the proposed activity and on the website of the public authority competent for decision-making;

(c) Mandatory contents of the public notice should be specified (see the requirements specified in art. 6, para. 2 (a)-(d), of the Aarhus Convention).

61. If the main means of informing the public is via Internet, there should be clear requirements that:

(a) All documents, including the application for development consent, the EIA documentation, etc., be submitted by proponents/developers also in electronic form;

(b) The information is available on the specially designated and easily recognizable Internet websites of the authorities and not only on the websites of proponents/developers.

62. Specific time frames for the public participation process should be set, including in particular sufficient time frames for:

(a) The public to examine the available information and documents, and to prepare to participate effectively;

(b) The public to prepare and submit comments (ECE/MP.PP/C.1/2009/2, annex II, para. 10 (d));

(c) The public officials to take any comments into account in a meaningful way (ibid., para. 10 (e)).

63. In relation to access to information relevant to decision-making:

(a) The provision of information should not be limited only to selected parts of EIA documentation (ibid., para. 10 (g));

(b) Copyright protection should not be considered as allowing for the prevention of the public availability of the full EIA documentation (ECE/MP.EIA/IC/2010/4, para. 20);

(c) There is a clear requirement that:

(i) Information is provided regardless of its volume (ECE/MP.PP/C.1/2009/2, annex II, para. 10 (b));

(ii) Information required to be provided by proponents/developers should not generally be exempted from disclosure (ibid., para. 10 (h)).

64. In addition to a public hearing, the public should have the possibility to submit in writing any comments related to the respective decision-making during the entire commenting period without the requirement that the comments be reasoned (art. 6, para. 7, of the Aarhus Convention).

65. When designing a national framework it should be borne in mind that the organization of discussions on the proposed project in the newspapers and through television programmes is not a sufficient way to assure public participation in compliance with article 6, paragraph 7, of the Aarhus Convention (ECE/MP.PP/2011/11/Add.2, para. 95).

66. Finally, there should be a clear requirement that in the decision due account is taken of the outcome of public participation (art. 6, para. 1, of the Espoo Convention and art. 6, para. 8, of the Aarhus Convention).

4. Final decision

67. The national framework should clearly indicate which of the decisions for approving the activities should be considered the final decision for the purpose of satisfying the requirements of the Convention (ECE/MP.EIA/10, decision IV/2, annex I, para. 64 (a)).

68. While the Parties are free to decide which of the multitude of decisions required within their regulatory framework should be considered final for the purpose of the Convention, their discretion in this respect is limited to those decisions that in real terms set the environmental conditions for implementing the activity (*ibid.*, para. 61) and which embrace all the basic parameters and main environmental implications of the proposed activity in question (cf. ECE/MP.PP/2008/5/Add.10, para. 43).

69. The national framework should be designed in such a way that for each of the decisions that are considered to be final in relation to a given activity there is clarity as to the authorized basic parameters of the proposed activity and the respective environmental conditions for implementing that activity. If the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the "final decision" in the meaning of the Convention (ECE/MP.EIA/IC/2009/2, para. 21). The same applies if the other decision is capable of significantly changing the above basic parameters or addressing significant environmental aspects of the activity not already covered (ECE/MP.PP/2008/5/Add.10, para. 43).

70. There should be a clear requirement that:

(a) The final decision be accompanied with the statement of reasons and considerations on which it is based (art. 6, para. 2, of the Espoo Convention and art. 6, para. 9, of the Aarhus Convention);

(b) Texts of the decisions, along with the reasons and considerations on which they are based, are publicly available (ECE/MP.PP/C.1/2009/2, annex II, para. 10 (j));

(c) The public authorities must:

(i) Promptly inform the public of the decisions they have taken and how the decisions, along with the reasons and considerations on which they are based, can be accessed;

(ii) Maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions they take, along with the reasons and considerations on which they are based and other information relevant to the decision-making, including the evidence of fulfilling the obligation for having informed the public and provided it with opportunities to submit comments.

71. It is recommended that the final decisions when applying the Convention include:

(a) Monitoring conditions (ECE/MP.EIA/IC/2010/2, para. 18);

(b) Information about possibilities to appeal (ECE/MP.EIA/IC/2009/2, para. 26 (a)).

72. When designing the national framework it should be borne in mind that in the light of article 3, paragraph 8, of the Espoo Convention there is an obligation to inform the public concerned in the affected Party of the final decision (ECE/MP.EIA/IC/2009/2, para. 27).

73. The final decision should provide a summary of the comments received pursuant to article 3, paragraph 8, and article 4, paragraph 2, and the outcome of the consultations as referred to in article 5, and should describe how they and the outcome of the EIA were incorporated or otherwise addressed in the final decision, in the light of the reasonable alternatives described in the EIA (ECE/MP.EIA/IC/2010/2, para. 40).

5. Transboundary procedure

74. In addition to the general obligation to clearly indicate in the national framework where in the decision-making process there is a place for a transboundary EIA procedure and who is responsible for carrying it out and by which means (ECE/MP.EIA/10, decision IV/2, annex I, para. 64) the national framework should also provide other necessary features of the transboundary procedure, both as the "Party of origin" and as the "affected Party", as detailed below.

75. One necessary condition for conducting a transboundary procedure is the early involvement of the environmental authorities, for example by requiring proponents/developers to submit a "declaration of intent" to such authorities, which in turn could decide if there is likelihood of a significant adverse transboundary impact and initiate the process of transboundary notification. This should be complemented with obligatory scoping where it is found there is a likelihood of transboundary impact. As an additional tool for the successful screening of activities likely to cause significant adverse transboundary effects, the Parties, either individually or through bilateral or multilateral agreements or other arrangements, might find it useful to establish a list of activities, with thresholds if appropriate, that should automatically be subject to notification (ECE/MP.EIA/IC/2010/2, para. 21).

76. When designing the national framework it should be borne in mind that:

(a) It is the common responsibility of all concerned Parties to ensure that the opportunity provided to the public of the affected Party to participate in the procedure under the Convention is equivalent to that provided to the public of the Party of origin. This includes accurate and effective notice given to the public. In this context, while recognizing the lack of administrative powers of the Party of origin's competent authority on the territory of the affected Party, at a minimum it should provide the possibility for the public of the affected Party to participate in the procedure organized in the territory of the Party of origin (cf. ECE/MP.EIA/IC/2010/2, para. 37, and ECE/MP.EIA/IC/2010/4, para. 19 (c));

(b) The concerned Parties should share the responsibility for ensuring that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin, including access to at least the relevant parts of the documentation in a language the public can understand, as set out in article 2, paragraph 6, article 3, paragraph 8, and article 4, paragraph 2, of the Convention (ECE/MP.EIA/IC/2010/2, para. 35);

(c) The Party of origin's competent authority should furthermore support the affected Party's competent authority in providing effective participation for the public of the affected Party in the transboundary EIA procedure (ECE/MP.EIA/IC/2010/4, para. 19 (c));

(d) EIA documentation should include a separate chapter on transboundary impact to facilitate translation (ECE/MP.EIA/IC/2010/2, para. 35);

(e) Entrusting the proponent of an activity with the carrying out of the procedure for transboundary EIA will not be adequate, unless the proponent is the State (*ibid.*, para. 36) (see also annex II);

(f) Consultations under article 5 are bilateral or multilateral discussions between authorities that have been authorized by the concerned Parties, and should not be confused with public participation under article 3, paragraph 8, and article 4, paragraph 2, or with consultation of the authorities under article 4, paragraph 2, in the areas likely to be affected (*ibid.*, para. 39).

77. When designing a national framework it should be ensured that:

(a) There is a legal mechanism for the comments of foreign authorities and the public regarding the information in the EIA materials (art. 3, para. 8, and art. 4, para. 2, of the Convention) to be duly taken into account (art. 6, para. 1, of the Espoo Convention) so that the transboundary impact is properly addressed;

(b) There is a legal mechanism for the results of consultations with foreign authorities under article 5 of the Espoo Convention to be duly taken into account by authorities issuing a final decision (art. 6, para. 1, of the Espoo Convention);

(c) Legal and financial mechanisms are in place allowing public authorities to undertake their duties related to providing public participation in transboundary procedures.

78. Moreover, Parties should bear in mind that a bilateral agreement could:

(a) Be an effective mechanism to address communication between concerned Parties and the sending of information (ECE/MP.EIA/IC/2010/4, para. 29);

(b) Resolve many issues relating to public participation, as foreseen by the Convention (ECE/MP.EIA/IC/2010/4, para. 19 (f)).

IV. Elements that should be considered when negotiating a bilateral agreement involving a country with an OVOS/expertise system

A. Introduction

79. The Espoo Convention envisages in article 8 that Parties “may continue existing or enter into new bilateral or multilateral agreements or other arrangements in order to implement their obligations under the Convention”.⁸

80. The Convention provides in appendix VI a list of elements that can be included in any such agreement, whether with a Party to the Convention or with any other country. The list is neither mandatory (i.e., not all elements listed in appendix VI have to be included in such agreements) nor exhaustive. It is here suggested that there are a number of other specific elements that should also be considered for inclusion in such an agreement.

81. The greater the number of details that are clearly regulated through a bilateral agreement, the less procedural problems countries may face when they enter into a transboundary procedure concerning a concrete activity. Therefore, the transboundary procedure can be faster and more efficient, and focus on substantive issues related to the actual transboundary impact of a given activity.

⁸ Article 8 of the Convention refers to bilateral or multilateral cooperation. In practice bilateral cooperation is more common and, for ease of reference, this section refers to “bilateral” agreements, without excluding the possibility of negotiating a multilateral agreement.

82. If negotiations start on the basis of a draft agreement prepared unilaterally and proposed by one partner country, there is a risk for the negotiations, as it puts that country in a privileged position vis-à-vis the position of the other partner country.

83. For this reason, it is advisable that negotiations start with an initial meeting (which could be at an expert level) during which the partner countries:

(a) Each present their legal and institutional framework applicable in the national and transboundary EIA procedure;

(b) Agree upon a tentative list of issues to be regulated in a bilateral agreement (i.e., the general scope of the agreement);

(c) Agree upon the level, venue and procedure of further negotiations.

84. Thus, when entering into negotiations concerning a bilateral agreement it is worthwhile for each country to prepare and propose initially a list of issues to be regulated in such an agreement, i.e., to propose a general scope of such an agreement.

85. The list of issues to be regulated (i.e., the scope of a bilateral agreement) may vary a bit depending on the country with which an agreement is to be negotiated. There are two obvious factors that may influence the negotiations for bilateral agreement:

(a) Whether a partner country has an OVOS/expertise system (in which the developer is responsible for OVOS) or whether a partner country has a Western-style EIA system where the public authorities have the responsibility for the EIA procedure, including public participation;

(b) Whether a partner country has a scoping phase in its national EIA procedure.

86. It is further advisable, before starting any negotiations concerning such a bilateral agreement, to do some initial preparations including research related to the existing obligations of the partner country under multilateral or bilateral environmental (or other) agreements, as well as the legal and institutional framework for national and transboundary procedures in the partner country. It would also be worthwhile to look at existing bilateral agreements, in particular at examples — if any — of agreements of the potential partner country with other countries. In this respect it might be useful to consult the dedicated ECE website (<http://www.unece.org/env/eia/resources/agreements.html>).

B. Specific elements to be considered

1. Mandatory notification

87. Bearing in mind the issues of concern in the countries having an OVOS/expertise system with early screening of activities likely to have a transboundary effect, as well as the recent recommendation of the Espoo Implementation Committee (ECE/MP.EIA/IC/2010/2, para. 21), it is advisable to consider introducing to the bilateral agreement a list of activities (with thresholds, as appropriate) that should automatically be subject to notification between the two (or more) countries subject to the agreement. The list may include, for example, activities depending on their type (e.g., all nuclear energy facilities) or on their location (e.g., all activities on common natural resources). The list can be different in agreements with different countries. Having a list of activities that are automatically subject to transboundary notification is valuable because it means the screening stage can be skipped. This can be particularly beneficial where it is not the ministry responsible for environment that authorizes activities subject to a domestic OVOS procedure (other ministries may not be familiar with the screening process). It is important to remember that the inclusion of a list of activities subject to transboundary impact assessment procedures will permit the screening process to be skipped only where the proponents/developers and

all the authorities involved in domestic permitting procedures are aware of this provision in the bilateral agreement.

2. Language

88. It is necessary to clearly regulate in the agreement the language for certain documents, in particular concerning:

- (a) Notification;
- (b) EIA documentation;
- (c) The final decision.

It may be suitable to agree on the language of other information as well, such as information on monitoring, which would significantly simplify the transboundary procedures.

89. The language may not necessarily be the same for all documents; for example, countries may agree that certain documents are transmitted in the national language only or in a third language (e.g., Russian or English).

3. Translation and interpretation

90. Regardless of the language determined for a document under the agreement, issues related to translation and interpretation should be clearly regulated, in particular who is responsible for arranging and/or for covering the costs associated with the translation of which documents, and/or the interpretation for which events (meetings or public hearings).

91. It could also be useful to provide for a procedure for monitoring the accuracy of the translation and for settlement of possible disputes related to the translation. The usual practice in such bilateral agreements is that the Party of origin is responsible for the translation of the documents into the language of the affected Party. This, however, entails the risk that the translation is not accurate enough, because translation into a foreign language is more difficult than translation into the national language. As a result, documents may be unintelligible for the affected Party. For this reason, where the agreement includes this type of arrangement, it is indispensable to submit all the documents in the original language along with the translated document.

4. Contact point for notification and means of notification

92. The agreement should clearly regulate the authorized contact point(s) for notification for both partner countries, as well as the means of notification. Identification of who is authorized to make or receive notifications is of particular importance for countries with the OVOS/expertise system, where the proponent/developer is usually responsible for the OVOS procedure.

93. As for the means of notification, all means are possible under the Convention provided that countries are in agreement about what means can be used and what their purpose is. Some countries accept informal means as a means of notification, such as by e-mail between the authorities of the countries involved, while other countries insist on formal means of notification, such as diplomatic avenues through ministries responsible for foreign affairs. Informal means of notification are commonly used by countries that have established a long tradition of cooperation and mutual trust in transboundary procedures.

5. Initial consultations about the timing

94. It may be useful to envisage in the agreement that, following a positive response to the notification, each individual transboundary procedure start with initial discussions

setting the details of the further procedure, such as, importantly, the time frames for the consecutive steps to be taken.

6. Public participation

95. The agreement should clearly regulate who is responsible for ensuring public participation. In particular it should clearly determine who bears the responsibility for:

(a) The identification of the public and the local authorities in the areas likely to be affected;

(b) Informing the public and local authorities in the areas likely to be affected about the possibility to participate (including the means through which they should be informed);

(c) Providing the public and local authorities in the areas likely to be affected with access to the necessary information and documents;

(d) Providing the public and local authorities in the areas likely to be affected with the possibility to submit comments (by written submissions or at a hearing);

(e) Providing the public and local authorities in the areas likely to be affected with information about the final decision and possibilities to have access to it.

96. Bearing in mind the special role of proponents/developers in countries having an OVOS/expertise system, a bilateral agreement could introduce quite a significant role for the proponents/developers in public participation as long as they act under the control of the competent authorities and their role is clearly defined and commonly accepted.

97. Providing a role for proponents/developers in the bilateral agreement can also result in some savings for the Party of origin in carrying out a transboundary procedure.

7. Consultations under article 5

98. The agreement may address the details regarding any future consultations under article 5 of the Convention, in particular the level, venue and timing of initiation of such consultations. Again, bearing in mind the role of proponents/developers in the OVOS/expertise system, Parties to the bilateral agreement or other arrangement may agree to include them in the consultations. Apart from this, Parties may agree on the involvement of other stakeholders, such as local authorities or representatives of the public.

99. It may also be worthwhile to regulate the procedure for the settlement of disputes arising from consultations.

8. Final decision

100. The agreement may also address the details of the final decision under article 6 of the Convention, in particular which decisions in each country should be considered as the "final decision" for the purpose of triggering the requirements of article 6 of the Convention. This issue is of special importance in relation to countries having an OVOS/expertise system, in which a careful examination is needed in order to identify the proper decision setting in real terms the conditions for the activity.

Annex I

Delegating tasks in the public participation procedure⁹

While overall responsibility for each stage of a public participation procedure will always remain with the public authority that is competent to take the decision, that authority may delegate certain administrative tasks regarding the procedure to other entities, e.g., a public authority closer to the site of the proposed activity, an independent entity specializing in public participation or the developer. The table below clarifies which tasks may, and which may not, be delegated to the developer.

<i>Task</i>	<i>May the competent authority delegate the task to the proponent/developer?</i>	
Design the general form of the public participation procedure, including its overall time frame	NO	
Design specific stages in the procedure, including their time frames	NO	
Identify the public concerned	NO	The proponent/developer may be requested to assist the competent public authority in identifying the public concerned by providing certain information, e.g., the potential impacts of the project and the details of persons residing/owning property within the scope of those impacts.
Prepare and carry out the notification of the public	YES	Under the direction and oversight of the public authority.
Provide the public with access to all relevant information	NO*	The public must be able to access all information that is relevant to the decision-making directly at the premises of the competent public authority. In parallel, the proponent/developer may be requested to provide access to the information relevant to the decision-making that it has provided.
Receive the public's written comments	NO	
Organize any public hearings, including notifying the public concerned of the date and place of the hearing(s) and organizing the venue	YES	Under the direction and oversight of the public authority.
Chair any public hearings	NO	

⁹ The above table is based upon a table developed for the Maastricht recommendations on promoting effective public participation in decision-making (ECE/MP.PP/2014/8), which were prepared under the Aarhus Convention.

<i>Task</i>	<i>May the competent authority delegate the task to the proponent/developer?</i>	
Collate and, if necessary, summarize, all written and oral comments received from the public	NO	All comments should be transmitted directly to the competent authority.
Consider all written and oral comments received from the public	NO	
Take into account the comments received from the public in the decision	NO	
Take the decision and prepare the reasons and considerations on which it is based	NO	
Inform the public of the decision, how it may be accessed and how it may be appealed	NO	
Make the decision available to the public, along with the reasons and considerations on which it is based	NO*	The public authority must do so itself, but the proponent/developer may do so in parallel.

* For tasks with an asterisk, the public authority must perform these tasks, but the proponent/developer may also do so in parallel.

Annex II

Delegating tasks in the transboundary procedure

While overall responsibility for each stage of a transboundary procedure rests with the public authority, the public authority may delegate certain of the administrative tasks regarding the procedure to the project proponent/developer. The table below clarifies which tasks may, and which may not, be delegated.

<i>Task</i>	<i>May it be delegated to the project proponent/developer?</i>	
Decide whether activity may have significant transboundary environmental impact and require notifying potentially affected Parties	NO	The proponent/developer assists the public authority in identifying potential significant transboundary environmental impact by providing certain information about the project and its impact.
Identify the potentially affected Parties	NO	The proponent/developer assists the public authority in identifying potentially affected Parties by providing certain information about the project and its impact.
Prepare and carry out the notification	NO	The public authority responsible for the tasks related to the transboundary procedure is responsible for notifying potentially affected Parties. The proponent/developer may be requested to assist in preparing the notification and to translate it.
Provide the affected Party with relevant information regarding the procedure	NO	The public authority responsible for the tasks related to the transboundary procedure must provide the affected Party with the information regarding the procedure.
Provide the affected Party with relevant information on the proposed activity and its possible significant adverse transboundary impact	YES	Under the direction and oversight of the public authority responsible for the tasks related to the transboundary procedure.
Informing the public of the affected Party about the proposed activity and possibilities for making comments or objections	YES	Under the direction and oversight of the public authorities responsible for the tasks related to the transboundary procedure in the Party of origin and the affected Party.
Distribution of the EIA documentation to the authorities and the public of the affected Party in the areas likely to be affected	YES	Under the direction and oversight of the public authorities responsible for the tasks related to the transboundary procedure in the Party of origin and the affected Party

<i>Task</i>	<i>May it be delegated to the project proponent/developer?</i>	
Receive the public's written comments or objections	NO	
Organize any public hearings, including notifying the public concerned of the date and place of the hearing(s) and organizing the venue	YES	Under the direction and oversight of the public authorities responsible for the tasks related to the transboundary procedure in the Party of origin and the affected Party.
Chair any public hearings	NO	
Collate all written and oral comments received from the public	NO	
Entering into consultations with the affected Party	NO	The proponent/developer may be allowed to participate in the consultations.
Take into due account in the final decision the outcome of the transboundary procedure (including the comments received and the results of the consultations)	NO	The competent public authority entrusted by the Party of origin with decision-making powers regarding a proposed activity is responsible for taking due account of the outcome of transboundary procedure.
Provide the affected Party with the final decision, along with the reasons and considerations on which it was based and possibilities to appeal it	NO	The public authority responsible for the tasks related to the transboundary procedure is responsible for providing the affected parties with the final decision along with the reasons and considerations on which it was based and possibilities to appeal it. The proponent/developer may be requested to translate it.



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Meeting of the Parties to the Convention
on Environmental Impact Assessment
in a Transboundary Context

Sixth session

Geneva, 2–5 June 2014

Item 6 of the provisional agenda

**Review of compliance, implementation and work
done by the Implementation Committee**

Draft fourth review of implementation of the Convention

Note by the secretariat

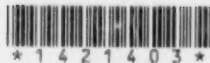
Summary

The Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context decided that a draft Fourth Review of Implementation of the Convention based on the reports by Parties would be presented at its sixth session (ECE/MP.EIA/SEA/2, decision V/7, para. 5).

This note presents the draft fourth review prepared by the secretariat, with the support of a consultant. The draft review has been finalized taking into account the comments made during and after the third meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 11–15 November 2013).

The Meeting of the Parties to the Convention is invited to adopt the draft review through decision VI/1.

GE.14-21403



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Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1-3	3
A. Preparation of the review.....	4-6	3
B. Findings of the review.....	7	4
II. Summary of responses to the questionnaire.....	8-90	4
A. Article 2: General provisions.....	9-13	4
B. Identification of a proposed activity requiring environmental impact assessment under the Convention.....	14-15	5
C. Public participation.....	16-17	5
D. Article 3: Notification.....	18-32	6
E. Article 4: Preparation of the environmental impact assessment documentation.....	33-48	8
F. Article 5: Consultations.....	49-56	10
G. Article 6: Final decision.....	57-66	11
H. Article 7: Post-project analysis.....	67-71	13
I. Article 8: Bilateral or multilateral agreements.....	72-73	14
J. Article 9: Research programmes.....	74	14
K. Ratification of the amendments to the Convention and of the Protocol on Strategic Environmental Assessment.....	75-76	14
L. Cases during the period 2010-2012.....	77-78	14
M. Experience in the transboundary environmental impact assessment procedure in 2010-2012.....	79-90	15

I. Introduction

1. The present document contains the Fourth Review of the Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). It examines responses to a questionnaire on countries' implementation of the Convention in the period 2010–2012.
2. This chapter describes the preparation of the review and the major findings. Chapter II below summarizes the responses to the questionnaire regarding the legal, administrative and other measures taken by Parties to implement the Convention, as well as their practical experiences of applying the Convention.
3. Due to length limitations for the review, the responses by Parties to questions concerning their domestic environmental impact assessment (EIA) procedures have not been included. Moreover, the review does not include the lists of transboundary cases in 2010–2012 provided by Parties, which can be accessed from the Convention website.¹ Finally, the suggested improvements to the review that were provided by some Parties have been submitted directly to the Implementation Committee under the Convention and its Protocol on Strategic Environmental Assessment (Protocol on SEA) to inform its work for the development of the subsequent questionnaires on implementation.

A. Preparation of the review

4. The Fourth Review of Implementation was prepared in line with the workplan adopted by the Meeting of the Parties to the Convention at its fifth session. (ECE/MP.EIA/SEA/2, decision V/9–I/9). Parties reported on their implementation by means of a questionnaire produced by the Implementation Committee under the Convention and its Protocol and approved by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment. Based on the completed questionnaires, the secretariat, with the assistance of a consultant, prepared the draft review set out in this document for consideration by the Working Group and subsequently for adoption by the Meeting of the Parties to the Convention at its sixth session.
5. Completed questionnaires were received by 7 June 2013 from 38² of the 44 States Parties to the Convention. They are available on the Convention website, and are reflected in this draft review.
6. At the time of writing, Bosnia and Herzegovina, Greece, Ireland, Luxembourg, Portugal and the United Kingdom of Great Britain and Northern Ireland had not submitted a completed questionnaire. The European Union (EU) is a Party to the Convention, but, being a regional economic integration organization, felt it inappropriate to report.

¹ See <http://www.unece.org/env/eia/>.

² Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Republic of Moldova, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia and Ukraine.

B. Findings of the review

7. An analysis of the national reports revealed a continuous increase in the application of the Convention and, to a lesser extent, in the development of bilateral and multilateral agreements to support its implementation. However, the analysis also identified the following possible weaknesses or shortcomings in the Convention's implementation by Parties:

- (a) A frequent lack of definition of several terms used in the Convention, such as "promptly", "due account" or "reasonably obtainable";
- (b) A failure by some Parties to recognize that, in accordance with article 3, paragraph 8, and article 4, paragraph 2, the "concerned Parties" are both responsible for ensuring opportunities for public participation;
- (c) A failure to recognize that article 5 provides for transboundary consultations distinct from article 4, paragraph 2;
- (d) A frequent lack of definition of the "final decision" (art. 6) and of specification of its required content;
- (e) A lack of experience in carrying out post-project analysis (art. 7);
- (f) A continuing need for bilateral and multilateral agreements or other arrangements, particularly to address differences between Parties in: the content of the notification; language; time frames; how to proceed when there is no response to a notification or if there is disagreement about the need for notification; the interpretation of various terms (such as "due account", "promptly", "reasonably obtainable", etc.); and the requirement for post-project analysis;
- (g) Confusion among the Parties about the respective functions of the point of contact for notification and the focal point for administrative matters;
- (h) A continuing need to further improve awareness of and capacity in the implementation of the Convention's obligations by the competent authorities at the national and regional levels, experts and practitioners on EIA, civil society, investors and academics.

II. Summary of responses to the questionnaire

8. The numbers indicated in italics within parentheses in this document refer to the questionnaire on the implementation of the Convention, e.g. "(24)" refers to question 24 in the questionnaire.

A. Article 2: General provisions

9. All respondents listed the general legal, administrative and other measures taken in their country to implement the provisions of the Convention (art. 2, para. 2) (*1 and 2*). A few Parties also reported on further measures under way or planned: Armenia and Azerbaijan referred to their draft laws; Albania planned to introduce new legislation in 2013; and Norway and Kazakhstan were in the process of amending their implementing legislation.

10. In most Parties, the authority responsible for implementing the EIA procedures in a transboundary context (*3*) was the environment ministry, frequently, in cooperation with the

ministry of foreign affairs (e.g., in Croatia, Cyprus, the Czech Republic, Italy, Latvia, Malta, Montenegro, Spain and the former Yugoslav Republic of Macedonia.).

11. In several Parties, such as Austria, the Czech Republic, France, Germany Lithuania, the Netherlands, Romania, Serbia, Slovakia, Sweden and Switzerland, either regional or local government bodies were responsible for the national EIA procedures. In many instances the competent authorities at the regional level were also responsible for conducting the steps in the transboundary EIA procedure subsequent to notification.

12. In most Parties, the environmental authority was responsible for collecting information on all transboundary EIAs. However, some of them (e.g., Belgium, Germany, the Netherlands and Norway) reported that they did not have a designated authority for this purpose (4).

13. The majority of Parties had no special provisions on transboundary EIA procedures for joint cross-border projects (5). Exceptions were Bulgaria, where EIA documentation was prepared by a joint team of experts; Canada and the Czech Republic, which referred to their legislation; and Estonia and Finland, which referred to their bilateral agreement. Estonia also referred to its bilateral agreement with Latvia in this regard. Others, such as Denmark and Sweden, reported that such procedures were assessed on a case-by-case basis.

B. Identification of a proposed activity requiring environmental impact assessment under the Convention

14. The vast majority of respondents reported that their national legislation already covered, or went beyond, the revised appendix I (6 and 7) to the Convention in the second amendment (ECE/MP.EIA/6, decision III/7). Switzerland had excluded some activities which did not occur on its territory and Ukraine noted that some activities, such as deforestation of large areas, overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres and wind farms, were not included in its legislation.

15. Liechtenstein and the Republic of Moldova both indicated that, since the previous reporting round, they had transposed the revised appendix I to the Convention into their respective national legislation.

C. Public participation

16. Parties described how their country, as Party of origin, ensured, together with the affected Party, that the opportunity given to the public of the affected Party was equivalent to the one given to their own public, as required in article 2, paragraph 6 (8). Most responding Parties indicated that they provided the relevant information and documentation to the affected Party as early as possible, e.g., in the scoping phase. Some Parties (e.g., Austria) specified that the documentation was accompanied with detailed information about the rights of the public of the affected Parties to participate. Some Parties would, in addition, specifically request the affected Party to make the information available for its public to comment (e.g., the Czech Republic). In many cases, the information was provided both in paper and electronic formats and posted on the internet. Some Parties, such as Lithuania, Romania and Slovenia, reported that if the affected Party informed them about a forthcoming public hearing, the project developer would propose attending it to present information on the project and its environmental impacts. Some Parties also indicated that they facilitated participation of the affected Party's public by offering support in arranging public participation, as needed (e.g., Finland), or by translating the notification into the language of the affected Party (e.g., Belarus, Belgium, the Netherlands and Ukraine). Some

respondents (e.g., Croatia) also stressed that the comments from the affected Party's public were given the same consideration as those from their own public.

17. Nevertheless, many respondents noted that aside from providing the necessary information and, in some cases, the possible further support to the affected Party, it was primarily the responsibility of the affected Party to organize its own public participation.

D. Article 3: Notification

1. Questions to the Party of origin

18. Respondents described how their country, as Party of origin, determined when to notify the affected Party, which was to occur, "as early as possible and no later than when informing its own public" (art. 3, para. 1), and at what stage of the EIA procedure this took place (9 and 10 (a)). Many Parties (e.g., Finland, Germany, Hungary, Lithuania, Norway, Poland, Spain, Sweden and Switzerland) reported that notification already took place in the scoping phase, if possible. In a number of Parties, it could occur even earlier, during or as a result of screening (e.g., Croatia, the Czech Republic, Denmark, the Netherlands and the former Yugoslav Republic of Macedonia). In some other Parties (e.g., France), notification took place after the receipt of the EIA documentation by the competent authority.

19. Nearly half of the Parties used the format for the notification as decided by the Meeting of the Parties (ECE/MP.EIA/2, decision I/4). The others used formats that were generally consistent with this format and which, at any event, covered the requirements in article 3, paragraph 2. Austria, for instance, provided all the information required by the Convention in a cover letter. In Finland, this was included in a cover letter and in the accompanying scoping documentation. Italy provided a non-technical synthesis of the project in the notification (10 (b)).

20. Belarus noted that the information it provided to the affected Party included a description of the type and scope of the activity, its objectives, proposed location and the timing for its implementation, as well as information on the EIA procedure, including the proposed timing for the public hearings and consultations, the nature of possible decisions on the proposed activity and information on the developer.

21. Parties reported on how they determined the time frame for the response to the notification from the affected Party (art. 3, para. 3) (10 (c)). Several Parties did this on a case-by-case basis, depending on the activity in question. Some Parties (e.g., Belarus and Estonia) referred to the relevant provisions included in their bilateral agreements. Many others based the time frame on their national legislation. The reported time frames ranged from two weeks to three months, with an average of about a month.

22. Should the time frame not be respected by the affected Party, most Parties would either call or send a written reminder to the point of contact for notification of the affected Party. Some Parties (e.g., Albania, Cyprus, Lithuania, Montenegro and Republic of Moldova) assumed in the absence of a response that the affected Party did not wish to participate in the procedure. Many Parties (e.g., Austria, Belgium) reported on their flexibility in extending deadlines when the affected Party requested it.

23. Parties reported that, as the Party of origin, they would request information from the affected Party if this was necessary for the preparation of the EIA documentation, (art. 3, para. 6) (10 (d)). In many Parties (e.g., Austria, Belgium, Cyprus, Finland, Germany, Italy, Lithuania, Poland, Switzerland and Ukraine) this was not specified in the legislation. Exceptions included Malta, the Republic of Moldova, Romania, Slovakia, Slovenia and the former Yugoslav Republic of Macedonia, which referred to their legislation, and the Netherlands, which referred to its bilateral agreements with Belgium and Germany. The

timing of the request varied: with the notification (e.g., Belarus, Finland, Hungary and Lithuania); upon receipt of a positive response (e.g., the Czech Republic); during scoping (Romania, Slovakia); or during the preparation of the EIA documentation (e.g., Estonia).

24. Parties reported on how they cooperated with the authorities of the affected Party on public participation in line with article 3, paragraph 8 (10 (e)). Many respondents noted that it was for the authorities of the affected Party to inform its public (e.g., Austria, Belgium, Finland, Serbia and Slovakia). Some Parties referred to bilateral agreements (e.g., Belarus, Estonia and Finland) and others to case-by-case determination of the responsibilities (e.g., Albania, Italy and Poland).

25. Hungary, Poland, Romania and Ukraine highlighted that they provided the information in English and/or in the language of the affected Party.

26. In almost all cases, respondents indicated that, as the Parties of origin, they expected the notification to the public of the affected Party to have the same content as that to their own public, and to be based on the information they provided. However, many respondents again noted that the notification and the determination of the contents of the notification were the responsibility of the affected Party (10 (f)). Some Parties (e.g., Sweden) reported that when translation was needed, often only a summary of the information was translated (10 (h)).

27. The vast majority of Parties made use of the points of contact for the purposes of notification, in accordance with decision I/3 (11), and as listed on the Convention website.³ The Netherlands noted that for projects involving Germany and Belgium it used contact points identified under the respective bilateral agreements. Germany, Poland and Spain also referred to bilateral agreements that sometimes specified alternative points of contact.

28. Parties also described when and how, as Party of origin, they notified their own public and the content of the public notification (10 (g)).

2. Questions to the affected Party

29. Whether, as affected Party, to participate in the EIA procedure (art. 3, para. 3) (12 (a)) was decided by most Parties case by case, based on the examination of criteria such as the nature of the activity, the likely extent of the transboundary impacts and the territory likely to be affected. Most Parties would consult relevant authorities at the national, regional and local levels and other relevant experts. In some Parties (e.g., Denmark, Finland and Hungary), the public was also consulted beforehand and a decision to participate or not in the EIA procedure also took into account the public's opinion.

30. Some Parties (such as Germany, the Netherlands and Poland) noted that they had no legal provisions regarding the obligation to provide, at a request of the Party of origin, information on the potentially affected environment necessary for the preparation of the EIA documentation (art. 3, para. 6) (12 (b)). For many respondents, the definition of the terms "reasonably obtainable" and "promptly" in this context were subject to interpretation. Croatia and Montenegro specified, for example, that "reasonably obtainable" information was information that was already, or readily, available. Some Parties, e.g., Denmark and Latvia, suggested that "promptly" signified "as soon as possible" or without "undue delay"; several others, e.g., Lithuania, specified that the information was sent within a month, or within 45 days, as in the Republic of Moldova. The Netherlands referred to its bilateral agreements with Belgium and Germany.

³ See http://www.unece.org/env/eia/points_of_contact.html.

31. Several respondents noted that, as affected Parties, they cooperated closely with the authorities of the Party of origin on public participation, e.g., in the holding of public hearings, as needed (Denmark, Hungary, Slovakia and Sweden) (art. 3, para. 8) (12 (c)).

32. Respondents explained when and how, as affected Parties, their public was notified (12 (d)). Most Parties indicated announcements via national and local newspapers, websites of the competent national and/or local authorities and local public billboards. In Belarus, the Environment Ministry published the EIA documentation on its website within three working days after having received it from the Party of origin. Denmark, Estonia, Finland, Germany, Hungary and Ukraine, among others, reported that their public was informed "without delay", while in Norway this was done within two weeks of receiving notification from the Party of origin. Kazakhstan reported that the public was informed via the media 20 days before the date of the public hearing. Cyprus noted that it had no such provisions in its legislation.

E. Article 4: Preparation of the environmental impact assessment documentation

1. Questions to the Party of origin

33. Several Parties (Croatia, the Czech Republic, Denmark, Germany, Italy, Kazakhstan, Kyrgyzstan, Poland, the Republic of Moldova, Romania and Slovakia) noted that their legislation was in line with article 4, paragraph 1, and appendix II concerning the requirements for the minimum content of the EIA documentation (13 (a)). Other Parties described their legal requirements in more detail, indicating their consistency with appendix II. Armenia and Azerbaijan currently lacked such legal requirements, but noted that they would be included in their new draft legislation.

34. In the majority of Parties, the competent authority determined the content of the EIA documentation on a case-by-case basis (scoping procedure) (art. 4, para. 1) depending on the type of project and often based on set criteria (13 (b)). Additional input was frequently sought from other relevant authorities and experts, environmental bodies and, in some cases (e.g., Croatia, the Czech Republic, Estonia, Finland, Hungary and the Netherlands) from the public and possibly also from non-governmental organizations (NGOs) (Spain), to finalize the scoping procedure. Canada would also take comments from NGOs into consideration. In some Parties (e.g., Austria, Bulgaria, Estonia, Finland, Lithuania, Norway and Switzerland), the proponent, or its EIA experts, prepared or drafted a scoping report.

35. Several Parties reported that it was up to the developer (the proponent) to identify and describe, where appropriate, reasonable alternatives (for example, locational or technological) to the proposed activity, including the no-action alternative, in line with appendix II, paragraph (b) (13 (c)). In Finland, the competent authority was responsible for identifying the alternatives to be assessed based on the proposal by the developer and the comments provided by other authorities, NGOs, the public and the affected Party. Many respondents, (e.g., Austria, Denmark, Estonia, Finland, Germany and Slovakia) noted that this was done on a case-by-case basis, taking into account the type of project, its location, size, management arrangements, production methods and technologies and time frame. In Kazakhstan, the technological, social, planning and economic aspects had to be considered. Some Parties (e.g., the Czech Republic, Estonia, Finland, Italy, Kyrgyzstan and the former Yugoslav Republic of Macedonia) also highlighted that the no-action alternative should be considered.

36. Most Parties provided a separate chapter on transboundary impacts in the EIA documentation and generally the type of information to be included was determined on the

basis of the activity proposed and its potential impacts. There was general agreement that this ensured greater clarity and understanding of transboundary impacts (29 (a)).

37. Parties described or quoted their legislation regarding the provision of the EIA documentation to the national authorities and the public (13 (d)).

38. As to the legal requirements, procedures and format for providing EIA documentation to the affected Party (art. 4, para. 2) (13 (e)), a number of respondents, including Austria, Belarus, Finland and Kyrgyzstan, indicated that official or diplomatic channels were used. The documentation was generally transmitted in both paper and electronic formats. Several Parties (e.g., Germany, Hungary, Spain and Ukraine) noted that they translated either the full documentation or at least its non-technical summary. Half of the responding Parties noted that there was no difference between the documentation provided domestically and that provided to the affected Party. The documentation was generally transmitted in both paper and electronic formats. Several Parties (e.g., Germany, Hungary, Spain and Ukraine) noted that they translated either the full documentation or at least its non-technical summary.

39. A number of respondents, notably Belgium and Canada, noted that the proponent could request that certain parts of the project remain private or confidential.

40. Respondents detailed the procedures for the examination of and deadlines for comments on the EIA documentation both domestically and in the transboundary context (13 (f) and (g)). The time frame would generally vary between one and three months. Most commonly, a 30-day deadline was provided both for national comments and for those from the affected Party. Canada noted that deadlines were similar for comments from both the domestic and the affected Party's public, with specific deadlines defined on a case-by-case basis. Belarus referred to its draft bilateral agreements with Lithuania, Poland and Ukraine, and Estonia referred to its bilateral agreement with Finland.

41. Respondents also reported on how the national comments and those received from the affected Party were addressed (art. 4, para. 2). The competent authority was generally responsible for considering the comments and taking them into account in the final decision. A number of Parties also, or instead, sent the comments to the proponent for incorporation into the EIA documentation (Belarus, Hungary and the Republic of Moldova).

42. Respondents described the legal requirements and procedures for public hearings domestically and in the affected Party (13 (h) and (i) and 29 (c)). Several Parties noted that, as the Party of origin, they had no means of influencing the jurisdiction of the affected Party regarding public hearings to be held in their territory. For a majority of responding Parties, hearings in their country were open to participation by the public from the affected Party. Sweden, as a rule, attempted to invite the public from both Parties to the same hearing, arranging for interpretation if necessary. The Netherlands noted that when it expected a large participation of the public from the affected party at its public hearing, e.g., from Germany, an interpreter would be hired for the occasion.

43. Several Parties (e.g., Austria, Bulgaria, Croatia, Denmark, Finland, Germany, the Netherlands, Norway, Romania, Serbia and Ukraine) might also initiate a public hearing in the affected Party or organize one when requested. The need for this would be determined on a case-by-case basis by the concerned Parties, together with the procedures to be followed, which could also be set out in bilateral agreements.

2. Questions to the affected Party

44. Parties described their legal requirements with respect to procedures and deadlines for comments on the EIA documentation to be submitted to the Party of origin (14 (a)).

Most commonly, once the competent authority in the affected Party received the EIA documentation from the Party of origin, it disseminated it to all relevant authorities at the central and local levels and to the public (generally publishing it also on its website) and was also responsible for collating all responses received and providing them back to the Party of origin.

45. Most Parties indicated that the deadline for comments on the EIA documentation was defined by the Party of origin. Norway noted that this was set on a case-by-case basis together with the Party of origin. Spain reported that for bilateral projects in which Portugal was the Party of origin, a "Collaboration Protocol" set a time limit of three months for comments and that a similar time limit would also apply in other cases, although not formally provided for.

46. Armenia, Azerbaijan, Liechtenstein, Malta and Ukraine noted that they currently did not have legal provisions regarding comments on the EIA documentation, but these were envisaged in the new Armenian draft legislation.

47. Respondents outlined their legislation concerning procedures and deadlines for public participation nationally in the review of the EIA documentation provided by the Party of origin, and the authorities responsible for these procedures (14 (b)). Lithuania noted that in its bilateral agreement with Poland, public participation was organized according to the affected Party's legislation. The Netherlands also referred to its bilateral agreements with Belgium and Germany whereby the affected Party assisted the Party of origin in organizing public participation in the affected Party. In Austria, the local authority collected all the comments received from the public and any additional information and sent it to the Party of origin. In Hungary, the competent authority organized a public forum, notified the public and invited representatives from both the developer and experts. In Kazakhstan, public participation was organized by the local executive authorities.

48. Parties described their legal requirements regarding procedures for the examination of the EIA documentation domestically, as affected Parties (14 (c)). In most cases, the competent authority was responsible for collecting the various inputs from the relevant authorities, experts and the public and providing the Party of origin with comments. For example, in Romania, the competent authority submitted the notification, the scoping document and the EIA documentation for comments to its public via the Internet, translating the documents into Romanian, as needed, and organized a public hearing where the Party of origin was invited to present the project and its likely impact. At the end of the consultation period, Romania, as the affected Party, would send the Party of origin, in written format, the public's concerns. In Finland, the competent authority would usually also submit a summary statement of the collected comments it sent to the Party of origin.

F. Article 5: Consultations

1. Questions to the Party of origin

49. Parties reported on the stages, procedures and deadlines for consultations under article 5 with the affected Party (15 (a) and (b) and 29 (d)), indicating in general that the consultations took place after the documentation had been made available to the affected Party. Germany noted that, notwithstanding the requirement in article 5 to enter into consultations "without undue delay", in practice it had proven to be more appropriate to do this only after the affected Party had given its comments on the EIA documentation and the Party of origin had had enough time to assess them. Some Parties (e.g., Austria and Serbia) noted that consultations might occur at any stage during the transboundary EIA procedure

50. France, Norway, Switzerland and Ukraine reported that they did not have legal provisions for consultations with the affected Party. Belarus, Estonia and Spain noted that the consultation procedure was defined in their respective bilateral agreements.

51. In many Parties consultations took place at the national level, but might first be held at the expert level (e.g., Belgium, Denmark and the Netherlands). For the purpose of consultations, Parties held meetings (e.g., Hungary and Lithuania) or exchanged written communications (e.g., Latvia and Romania). In several cases (such as Bulgaria, Germany, Hungary, Kazakhstan, the Republic of Moldova and Serbia), both took place. In addition to the competent authorities, and often also other relevant national and local authorities, from the concerned Parties, the consultations could involve the proponent (e.g., Austria, Finland), experts (e.g., Denmark, Montenegro and Switzerland) and the public (Bulgaria, Serbia and Slovakia).

52. In some cases (Estonia, Germany and Latvia) the duration of the consultation period was agreed jointly between both Parties on a case-by-case basis. Others reported consultation periods of 30 days (Cyprus), eight weeks (Romania), three months (Estonia — in its bilateral agreement with Finland — and Spain) and six months (Estonia in its bilateral agreement with Latvia).

2. Questions to the affected Party

53. Most Parties, as affected Parties, did not have specific legal requirements on procedures for interaction with the Party of origin regarding consultations (16 (a)), with the exception of Albania, Bulgaria, Germany, the Republic of Moldova and the former Yugoslav Republic of Macedonia, which referred to their legislation. Some Parties (e.g., Belarus, Estonia and the Netherlands) referred to bilateral agreements, or to their drafts.

54. The stages, procedures and deadlines for domestic consultations described by Parties as affected Parties (16 (b)) were similar to the arrangements they had outlined as Parties of origin.

3. Questions to the concerned Parties

55. Many Parties reported that they were not aware of any significant difficulties during consultations under article 5. A number of them, as affected Parties, considered that the consultations had supported the prevention, reduction and control of significant transboundary environmental impacts.

56. However, several other Parties had encountered difficulties either as a Party of origin or as an affected Party during consultations (29 (d)). For the affected Parties, these included: lack or poor quality of translation of both technical and non-technical documentation; a need for additional information; and time constraints, in particular, insufficient time to submit comments (Estonia and Latvia). For the Parties of origin, excessive extensions of the duration of the consultations and delays caused in the transboundary procedure (and in the investment decisions) were described as difficult (e.g., Poland, Slovakia and Slovenia). Other difficulties identified included: the different technical competence of stakeholders taking part in consultations from both Parties; and differences in the binding (or non-binding) nature of consultation outcomes depending on the Party (Poland).

G. Article 6: Final decision

57. Parties reported on how they defined a “final decision” for the implementation of the planned activity (art. 6), the content of the decision and procedures for their adoption (17 (a) and 29 (e)). For several respondents (e.g., Austria, Belgium, Croatia, Denmark, Estonia,

Finland, Germany and Romania) the EIA was integrated into the permitting or "development consent" procedure, the "final decision" being a decision to deliver a "permit" (e.g., a building or construction permit) or a "development consent" authorizing (the proponent) to proceed with a proposed activity. In Norway and Switzerland, for some activities, the authorization to proceed required several decisions, the last of which was considered "final".

58. In contrast, for some respondents the final decision was a separate environmental decision, or a statement, based on the EIA procedure, which was a precondition for applying for a permit or development consent (e.g., Lithuania, Poland, Serbia, Slovakia and Slovenia).

59. In Albania a final decision was "an environmental statement" issued by the environment minister, which would serve as a guiding document for the planning authority and/or any other relevant responsible authority to deliver a permit. For Armenia, among countries with a system of State ecological expertise, the final decision was an approval given only based on a positive "expert conclusion" issued by the competent authority. Ukraine's legislation had no definition for a "final decision", but, in practice, the permit for the construction work was considered as a final decision. Belarus also reported that it did not have a definition for "final decision" or any legal requirements for its content, but that a decision on permitting the construction of the planned activity was understood as a "final decision". This was commonly delivered by the relevant local authority or, in the case of nuclear power plants, by the president, and, for other nuclear energy-related installations, storage facilities or waste repositories, by the Council of Ministers.

60. Parties provided examples of the form, content and language of the final decision (29 (e)). Regarding the form, most Parties indicated in general that it complied with the requirements set out in article 6, paragraph 1. For most Parties the final decision contained the final statement of the competent authority, including reasons and considerations on which the decision was based, explaining how the EIA and the comments from the authorities and the public of the concerned Parties had been taken into account. Germany noted that the final decision should also contain information on the right of appeal.

61. Respondents identified what their country regarded as the "final decision" for each type of activity in appendix I. Parties were also asked to indicate whether all activities listed in appendix I required a final decision (17 (b)). For nearly all Parties that responded to the question this was the case. However, Sweden reported that almost all projects required a final decision and a number of Parties did not provide an answer (Albania, Armenia, Azerbaijan, Bulgaria, Canada, the Czech Republic, Germany, Italy, Kazakhstan, Liechtenstein, Switzerland, the former Yugoslav Republic of Macedonia and Ukraine).

62. Parties reported on their procedures for informing the public of the final decision nationally and for submitting it to the affected Party (17 (c)). In the majority of cases (e.g., Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Malta, Poland, Slovakia and Slovenia), the affected Party was informed via official channels by the environment ministry (or equivalent competent authority). In most cases the affected Party was provided with a copy of the final decision together with the reasons and considerations on which it was based. In addition, Parties would send information on any conditions attached, and a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

63. Most Parties noted that the final decision was posted on their website (and/or public noticeboard) to provide information to their own public and sent to the affected Parties and to the proponent by mail and/or by e-mail. In some cases (for example, in Belarus, Belgium, Italy and the Netherlands) the final decision was published in an official newspaper.

64. Most Parties did not provide information regarding the translation of the final decision. Romania usually translated the final decision into English, and Ukraine into English or Russian, before transmitting it to the affected Party via diplomatic channels.

65. In a clear majority of Parties, the comments of the authorities and the public of the affected Party and the outcome of the consultations (art. 6, para. 1) (17 (d)) were taken into consideration in the same way as the comments from the authorities and the public in the Party of origin. Armenia noted that this would be required in its draft law and Canada noted that, although this was not required in its laws, it would be likely to give strong consideration to the comments received from the public and the authorities of the affected Party. Switzerland underlined that, while the Swiss public could, under certain conditions, appeal the decision, this right was not granted to the affected Party under the Convention.

66. Many respondents noted that they had not had to review a decision based on additional information that became available according to article 6, paragraph 3, before the implementation of an activity started (17 (e)), and therefore that they had no experience to report in this respect. In several cases, such as, for example, in Belarus, Hungary, Italy, Kazakhstan, Romania, Serbia, Slovenia and Ukraine, environmental legislation provided for the possibility of reviewing a final decision, if deemed necessary. Some Parties (e.g., the Czech Republic, Estonia, Germany, the Netherlands, Norway and Romania) noted that should additional information become available they would consult the affected Party once again to establish whether the decision had to be revised. Belgium noted that review of the decision was possible before and after implementation of the given activity. In Austria, the possibilities to revise a valid decision were strictly limited and, in Lithuania, once taken, the decision was final and only courts could repeal it. France noted that, for example, if new protected species were discovered on a project site before or even during the work, the relevant EU legislation provided for the suspension of the activity, an additional review and possible exemption.

H. Article 7: Post-project analysis

67. Parties that had legal requirements for a post-project analysis in line with article 7, paragraph 1 (18 (a)), included Albania, Austria, Belarus, Belgium, Bulgaria, Canada, the Czech Republic, Estonia, France, Germany, Italy, Kazakhstan, Malta, Montenegro, the Netherlands, Norway, Romania, Slovakia and Slovenia. In several other Parties the necessity for a post-project analysis was envisaged on a case-by-case basis (Armenia, Belgium (Flanders and Brussels Regions), Croatia, Denmark, Finland, Hungary, Poland and Switzerland).

68. Most respondents indicated that their country had not carried out post-project analyses, at least in the transboundary context (29 (f)). Others, such as Croatia, Denmark, Hungary, Kazakhstan, Norway, Poland, Romania, Spain and Sweden listed some examples of activities that had been subject to post-project analysis. Denmark, for example, had carried out post-project analyses for offshore wind farms, the bridge between Sweden and Denmark and the Nord Stream Gas Pipeline. In Kazakhstan, a post-project analysis was carried out on the reconstructed Taraz metallurgical plant to assess its level of emissions.

69. A few Parties indicated that information on the post-project evaluations of activities subject to the Convention was difficult to collect or to verify by the Parties in the absence of a national registration system (e.g., Germany and Netherlands).

70. Some Parties referred to specific legal requirements for informing the affected Party (art. 7, para. 2) of the results of post-project analyses (18 (b)) including Albania, Croatia, Cyprus, Denmark, Italy, Montenegro, the Netherlands, Poland, Romania and Spain. In other Parties, this was not provided for in the legislation, but would be determined on a

case-by-case basis. Some Parties, such as Estonia and Finland, referred to bilateral agreements.

71. A number of Parties, e.g., Croatia, Finland, the Netherlands and Montenegro, reported that the competent authority informed the affected Party of the results of post-project analyses through the points of contact, while, e.g., in Denmark and Italy, the information of the results from post-project analyses was made available on relevant websites.

I. Article 8: Bilateral or multilateral agreements

72. A number of Parties listed their bilateral or multilateral agreements based on the Convention (19) (Austria, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Slovakia, and Parties or signatories to the multilateral agreement among the countries of South-Eastern Europe for implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (Bucharest Agreement, 2008). Some were in the process of discussing draft bilateral agreements (i.e., Belarus, Belgium, the Netherlands and the Republic of Moldova). However, the majority of Parties reported that they had not established such agreements.

73. Most Parties had not established supplementary points of contact pursuant to bilateral or multilateral agreements (20) apart from Belgium with the Netherlands, and Germany with both the Netherlands and Poland. In the Netherlands, supplementary points of contact had also been established at the provincial level. Spain reported that a bilateral commission had been established with Portugal to implement the Albufeira Convention regulating the transboundary waters between the two countries.

J. Article 9: Research programmes

74. A few respondents (Austria, Belarus, Denmark, Germany, Kazakhstan, Romania and Slovakia) referred to specific research activities carried out in their countries in relation to the items mentioned in article 9 (21). Most other respondents were not aware of such research.

K. Ratification of the amendments to the Convention and of the Protocol on Strategic Environmental Assessment

75. Armenia, Denmark, Finland, Latvia, Malta, Republic of Moldova, Serbia and Slovenia indicated that they were planning to ratify both the first (22) and the second (23) amendments to the Convention shortly.

76. Azerbaijan, France, Latvia, Malta and the Republic of Moldova reported that they were planning to ratify the Protocol on SEA (24) shortly.

L. Cases during the period 2010–2012

77. A clear majority of respondents listed the transboundary EIA procedures that were under way during the period 2010–2012 (25 and 26), identifying for each whether their country was the Party of the origin or the affected Party. No responding Party objected to its list of transboundary EIA procedures being included in a compilation to be made available on the Convention website.

78. Several Parties responded that it was difficult to indicate an average duration (27) of transboundary EIA procedures, since the duration depended notably on the nature and complexity of the proposed activity, the time needed for preparation of the EIA documentation and the number of Parties involved. The estimated average durations provided by Parties ranged from two months (Denmark) to three and a half years (Latvia), with the majority of respondents reporting somewhere between nine months and two years.

M. Experience in the transboundary environmental impact assessment procedure in 2010–2012

79. For many respondents, the application of the Convention had supported the prevention, reduction or control of possible significant transboundary environmental impacts, had served to engage the public in the process, had ensured broader and better-informed consideration of environmental issues, had improved proposed activities and had enhanced transboundary collaboration (28). Some respondents noted, however, that it was difficult to attribute the improvements to the Convention.

80. The Czech Republic indicated that the transboundary EIA process with its neighbouring Parties had helped to ensure wider public participation and a wider scope of the environmental conditions considered, but that it had also burdened the administration and the project proponents. It referred to its cooperation with Slovakia as the best example because of the similarity of the languages and the legislation between the two countries. Both Hungary and the Netherlands provided examples where transboundary collaboration on the EIA procedure had helped to change the project location in order to preserve Natura 2000 sites. Spain provided an example of an oil refinery in Extremadura which had been granted a negative final decision based, notably, on comments by the affected Party (Portugal).

81. None of the respondents were willing to provide good practice cases in the form of a Convention "case study fact sheet" (29 (h)).

82. The need for and scope of translation (29 (b)) varied from case to case. Since the decision on what information was translated lay with the competent authority in the Party of origin, bilateral agreements between Parties were recommended to solve potential issues in this respect, such as poor quality of translation. Some good practices highlighted by respondents included:

(a) Translation of the whole preliminary EIA documentation into English or into the language of the affected Party (Hungary);

(b) Developers being held responsible for much of the translation (Hungary and Poland);

(c) Notification and official letters being prepared in the language of the affected Party by the competent authority (Poland).

83. A few Parties provided information on successful examples of organizing transboundary EIA procedures for joint cross-border projects (29 (g)). For example:

(a) The Nabucco Gas Pipeline was highlighted by Bulgaria, Hungary and Romania as an example of good collaboration among the Convention focal points, the different Parties' EIA teams, the developer and the public;

(b) The Nord Stream Pipeline project was seen as a successful example of collaboration by Denmark, Germany and Sweden, although there were challenges linked to the different legal systems in the nine concerned Parties involved;

(c) The Zlobin-Rupa Gas Pipeline (Croatia and Slovenia) was mentioned by Slovenia as a good example, since the process had been fast and the national contact points had worked together effectively;

(d) The Sezged combined-cycle gas turbine power plant was seen by Serbia as a good example of collaboration with Hungary;

(e) The use of joint bodies, such as intergovernmental commissions in transboundary projects between Italy and France.

84. Most Parties applied the Convention through their points of contact (29 (i)) (at least at the start), focal points and competent authorities. In some cases, joint bodies, bilateral and multilateral agreements were also involved.

85. Parties identified some difficulties in dealing with different legal systems of the other concerned Party or Parties (30). Austria, Estonia, Germany and Poland all noted that bilateral or trilateral agreements helped to overcome possible difficulties linked to different legal systems. Romania noted that bilateral cooperation might not be enough to overcome misunderstandings between the concerned Parties in cases where the differences between the legislative systems were important and the requirements of the Convention were not well understood. Several Parties (Austria, the Czech Republic, Estonia, France, Germany, Serbia and Slovenia) highlighted that close communication and cooperation between points of contact and focal points (before and during the EIA process) supported mutual understanding of the different legal systems (e.g., through regular annual or biennial meetings). Norway noted that meetings with relevant senior authorities in the early stages of the process were crucial to ensure coordination.

86. Parties provided information on their experience in using the guidance adopted by the Meeting of the Parties to the Convention (31 (a)-(c)), as follows:

(a) Guidance on public participation (ECE/MP.EIA/7) was used by several Parties, and in some cases the guidelines were already well known and applied entirely (Austria). The guidelines were used as a reference document to draw up bilateral agreements with other Parties (Republic of Moldova and the Netherlands); to inform national guidance (the Netherlands); for the development of EIA legislation (Republic of Moldova); and to better understand public participation procedures and inform project promoters (Romania and Slovenia). In Armenia, the guidance was translated and disseminated by the Government through the national Aarhus Centres. For Estonia, experiences gathered in different transboundary EIAs and cooperation between the concerned Parties remained the basis for applying the Convention (rather than the guidelines). Poland found it difficult to apply the guidance because other Parties were not familiar with it;

(b) Guidance on subregional cooperation (ECE/MP.EIA/6, annex V, appendix) was used by Denmark, Finland, Kyrgyzstan and Switzerland;

(c) Guidance on good practice and on bilateral and multilateral agreements (ECE/MP.EIA/6, annex IV, appendix) was used by Austria, Denmark, Finland, Germany, Norway, Slovenia and Switzerland.

87. Most Parties did not have major difficulties in implementing the procedures defined in the Convention (32), either as Party of origin or as affected Party. Others, such as Armenia and Romania, reported that they had had difficulties both as an affected Party and as a Party of origin. Armenia noted in this regard that the Convention lacked mechanisms for cooperation among Parties in the presence of "exceptional circumstances". Austria reported that it had had some difficulty as an affected Party.

88. A number of Parties also identified provisions that were challenging to implement or unclear. These comments included: the entire Convention leaves scope for interpretation (Switzerland); provisions related to "due account" (art. 6, para. 1) and "reasonable alternatives" (appendix II, para. b) are not clear and subject to interpretation (Belarus); additional guidance is needed in exceptional circumstances (Armenia); the classification of activities with transboundary impacts (appendices I and III) and the meaning of "close to an international frontier" are unclear (Kyrgyzstan); there is a lack of clear provisions on the issue of translation of documents (Austria, Lithuania); it is unclear what information should be translated (Germany, Switzerland); provisions on formal bilateral agreements are missing (Belgium); there is no clear distinction between article 2, paragraph 6, article 3, paragraph 8, article 4, paragraph 2, and article 5 (the Netherlands and Switzerland); there is confusion on the interpretation of article 5 (Poland); there is a lack of clarity on what "reasonable time frames for consultations" are (Poland); it is unclear what "shared responsibility for organizing the public participation" entails (Netherlands); there is a need for separate guidance on article 2, paragraph 1 (Poland); there is no clear distinction between "directly to the competent authority of the Party of origin" and "through the Party of origin" (art. 3, para. 8) (Poland); the meaning of "final decision" is unclear (Romania); and there is a lack of clarity as to whether transboundary environmental impacts need to be assessed using the legal requirements of the Party of origin or those of the affected Party (Switzerland).

89. Most Parties had undertaken awareness-raising activities to promote the Convention among stakeholders (33), such as: round tables, workshops, public meetings and consultations with the public, local authorities, consultants, experts, academia and NGOs (Armenia, Austria, Republic of Moldova); bilateral meetings and workshops with neighbouring Parties on transboundary issues (Austria and Slovakia); subregional workshops on transboundary EIA and SEA (Azerbaijan); participation in regional trainings (Croatia); training programmes and workshops for government bodies, local authorities, NGOs and representatives of the public (Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Poland and Slovenia); production of information materials, manuals and practical guidance on the Convention and its application (Germany, Estonia, France, Latvia, Lithuania and the Netherlands); publication of information on the ministry of environment website (Estonia, Germany, Lithuania and the Netherlands); and establishment of a helpdesk on EIA and SEA-related questions (the Netherlands).

90. Fifteen Parties (Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Germany, Hungary, Italy, Latvia, Liechtenstein, the Netherlands, Spain and Sweden) indicated that they did not see a need to improve the application of the Convention (34) in their country, although some noted the need to improve its application by their neighbours. Others suggested areas for improvement included:

- (a) Elaborating new bilateral agreements with neighbouring Parties (Belarus, Lithuania and Poland);
- (b) Revising/adopting new national environmental legislation (Azerbaijan, Belarus, France, Kyrgyzstan, Malta, Norway, Slovakia and the former Yugoslav Republic of Macedonia);
- (c) Raising awareness on the Convention and setting up a network of correspondents both at the central and regional levels (France);
- (d) Communicating regularly with competent authorities on the legal and practical implications (the Netherlands and Switzerland);
- (e) Regular seminars and trainings aimed at public institutions, consultants and experts, academics and investors (Slovenia).